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ERRATA

US EPA RECORDS CENTER REGION 5



515946

To Consent Decree and Remedial Action  
 Plan in U.S.A. et al. v. Reilly Tar  
 & Chemical Corporation et al. dated  
 July 22, 1985.

Consent Decree

<u>Page</u>	<u>Part</u>	<u>Errata</u>
4	C.5.	[Insert indemnification language from agreements between SLP and the other minor defendants not yet received from SLP]
5	C.7.	Delete underlining from word "waste"
6	C.11.	[Waiting for service and filing of SLP Amended Complaint]
9	13(a)(16)	Capitalize "City"
12	13(a)(46)	Change "198211983" to "1982-1983"
13	13(a)(49)	Change "Corp.," to "Corporation,"
13	13(a)(52)	Change "Protect" to "Protection"
13	13(a)(55)	Capitalize "Contamination"
15	13(a)(66)	Delete entirely
15	13(b)	Change "section 13(a)" to "Paragraph 13(a)"
16	13(b)(16)	Delete "(See also reports 17 and 18)"
16	13(b)(19)	Delete "(See also report 46)"
22	D.5.	Add after Department of Health, ", his/her authorized representative."
22	D.7.	Add after Minnesota Pollution Control Agency ", or his/her authorized representative."

24	D.12.	Delete "the U.S. Geological Survey, the U.S. Fish & Wildlife Service and the Office of Environmental Project Review of"
25	D.20.	Add after (currently Region V) ", or his/her authorized representative."
26	E., Para. 2, line 6	Add after Reilly "and any other Party hereto,"
26	E., Para. 2, line 7	Add after Reilly "or any other Party hereto"
31	G.6.	Delete the period after Part G
36	H.7., line 2	Insert a comma after "decision"
43	M.1.A., last line	Change "a" to "the"
49	N.3	Add a sentence to the end of this subpart: "This Consent Decree shall not be construed to require extraordinary construction measures under Minnesota practice which would be necessary to continue construction in the event of inclement weather."
53	P, Para. 1, line 12	Delete ", at least ninety (90) Days"
53	P, Para. 1, line 13	Delete comma after conveyance
53	P, Para. 1	Add a sentence to the end of the paragraph: "No such conveyance shall occur for at least thirty (30) Days after receipt of such notice."
54	P, lines 5 and 10	Delete the word "private"
54	P	Add at the end of Part P the following:

In the event that access is required to any of the properties above-named, Reilly shall provide the owner reasonable advance notice and opportunity for consultation. Consistent with the purposes for which access is needed, Reilly shall make best efforts to minimize disruption to current use and enjoyment of the property. Disputes between Reilly and the property owner concerning access shall be subject to dispute resolution under Part I.

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Q

Add to the end of Part Q the following:

Exhibit B provides for the establishment of the St. Louis Park COntingency Fund ("Contingency Fund"). This Contingency Fund is to be used, all as more fully stated in Exhibit B itself, for certain expenditures under the RAP. Exhibit B also provides, pursuant to paragraph 15 thereof, that the agreement itself may become null and void as to the further performance of the obligations of St. Louis Park if Reilly is dissolved, liquidated or otherwise fails to perform any of its obligations under Exhibit B, the Consent Decree and the RAP. In the event paragraph 15 of Exhibit B becomes operative and monies exist in the Contingency Fund, then the Contingency Fund shall come under the control of the Court. Monies shall thereafter be disbursed from the Contingency Fund only upon order of the Court after hearing the comments of the United States, the State, St. Louis Park and any other affected city. Monies shall be disbursed from the Contingency Fund only for the funding of tasks or measures required of Reilly by the RAP, including noncontingent measures. Upon the termination of the Consent Decree, the Parties agree and stipulate that the Court shall disburse whatever funds remain in the Contingency Fund to St. Louis Park for use by St. Louis Park without restriction as to purpose.

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S, line 15-16 After Reilly, delete the comma and insert "or"; delete "or Hopkins"

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S

Add to Part S the following paragraph: "Part U shall not resolve the right and defenses of or among the Parties with respect to unasserted claims which may be subsequently brought by a person not a Party to this Consent Decree. Nothing herein is intended

64	U.5., line 3	Delete "or" and insert a comma. After "State" add "or Hopkins"
65	U.6., line 3	Delete "or" and insert a comma. After "State" add "or Hopkins"
67	U.8., line 2	Delete "or" and insert a comma. After "State" add "or Hopkins"
70	Z	Insert the following:

## FINANCIAL RESPONSIBILITY

By 31 May of each year, Reilly shall deliver to the United States and the State, a certificate prepared by Reilly's certified public accounting firm which sets forth whether Reilly's consolidated performance is in accord with the requirements set forth below.

1. Current ratio, defined as:

where

Current Liabilities = All end-of-period current liabilities plus the current portion of any long-term debt held by Reilly

2. Net Working Capital defined as:

Net working Capital = End-of-period current  
assets minus end-of-period  
current liabilities

3. Total Liabilities/Tangible Net Worth Ratio, defined  
as:

$$\frac{\text{Total Liabilities}}{\text{Tangible Net Worth}} = \frac{\text{Total Liabilities}}{\text{Net Worth} - \text{Intangible Assets}}$$

Net Worth = End-of-period owner's  
preferred and common equity  
including retained earnings  
and paid-in capital

Intangible Assets = End-of-period book  
value of any nonphysical  
or financial assets  
such as patents,  
trademarks, and goodwill

Total Liabilities = End-of-period total assets  
minus end-of-period net  
worth

4. Retained Earnings, defined as:

Retained Earnings = Cumulative internally  
generated earnings  
available to common  
stock shareholders  
and not paid out as  
dividends

The certificate given by Reilly to the United States and the State shall state whether Reilly has failed any of four tests. The failure criteria for the four tests are listed below:

(1) Reilly's Current Ratio, as defined above, is lower than 1.75.

(2) Reilly's net working capital, as defined above, is less than 70 percent of its 1984 end-of-period value.

(3) Reilly's Total Liabilities/Net Worth ratio, as defined above, is greater than 1.1.

(4) Reilly's retained earnings, as defined above,

is less than 70 percent of its 1984 end-of-period value.   \*  /

Reilly will be deemed to have failed the short-term requirement if it fails either of the Current Ratio test of the Net Working Capital test. Reilly will be deemed to have failed the long-term requirement if it fails either of the Total Liabilities/Net Worth ratio test or the Retained Earnings test.

#### CURES AND WAIVERS

If Reilly fails the short-term requirement, it shall provide to the United States and the State within sixty (60) days of notification to the United States and the State of such failure, a letter of credit, surety bond, or other assurance for an amount equal to the estimated cost of the remedial actions which Reilly is required to undertake in the next two years under the Remedial Action Plan (RAP). If Reilly passes the short-term requirement for the year immediately following a year for which the short-term requirement was failed, it may reduce the amount of the letter of credit, surety bond, or other assurance to one-half of its original amount. If Reilly again passes the short-term requirement for the following year, it may further reduce the amount of the letter of credit, surety bond, or other assurance to zero and discontinue them. However, if Reilly fails the short-term requirement in successive years, the amount of any letter of credit, surety bond or other assurance shall be adjusted each year to equal the estimated cost of remedial actions to be undertaken in the next two years.

If Reilly fails the long-term requirement, it shall provide to the United States and the State within sixty (60) Days a letter of credit, surety bond, or other assurance for an amount equal to the estimated cost of all the remaining remedial actions to be undertaken in all future years as imposed upon Reilly by the RAP, including the cost of contingencies. Reilly may reduce the amount of the letter of credit, surety bond, or other assurance to zero and discontinue them if it passes the long-term requirement in two successive years after having failed the long-term requirement for successive years, the amount of any letter

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  \*   / If Reilly should choose to recapitalize its equity in the future in some manner which influences the continuity of reported retained earnings, the United States and the State will be informed and the earnings will be restated in a December 31, 1984 basis and that basis will be used for determining subsequent compliance.

of credit, surety bond or any other assurance shall be adjusted each year to equal the estimated costs of the remedy, including the costs of contingencies.

If Reilly fails the short-term requirement for the same year for which it fails the long-term requirement, the conditions applying to the failure of the long-term requirement, as described in the immediately preceding paragraph, shall take precedence over the conditions described for failure of the short-term requirement.

If Reilly fails the long-term requirement, the estimated remedial action costs shall be composed of three parts: (1) capital construction costs, which if relevant, shall be based on estimated construction costs required to complete construction, (2) operation and maintenance costs, which shall be based, if possible, on historical operation and maintenance costs adjusted for inflation, and (3) an additional amount to cover contingencies. The additional amount will be determined by the United States and the State according to apparent costs and likelihood of additional remedial actions. The amount then in the St. Louis Park Contingency Fund created in Exhibit B shall constitute a credit against the amount of any letter of credit, surety bond or other assurances which Reilly is obligated to provide in the event it fails the long-term requirement. However, because the United States and the State did not participate in negotiating Exhibit B, they have not agreed that the amounts payable to the St. Louis Park Contingency Fund are adequate to cover the estimated cost of contingencies in the event Reilly fails the long-term requirement.

If there is a dispute among the parties as to the estimated amount of the remedial actions under the RAP, including the costs of contingencies, any of those parties may request an expedited hearing before the court to determine the appropriate amount. Such expedited hearing shall be completed within 45 Days of 31 May of that year subject to the availability of the Court. Nonetheless, Reilly shall provide a letter of credit, surety bond or other assurances for the lower of the disputed amounts within sixty (60) Days of May 31 and shall augment that letter of credit, surety or other assurances to reflect the decision of the court within sixty (60) Days of that decision.

If Reilly does not provide a letter of credit, surety bond, or other assurance of its access to credit in appropriate amount within the time periods required by this Part, Reilly shall within twenty (20) Days pay the amount required by this Part to be covered by any letter of credit, surety bond or other assurances into the registry of the Court. Reilly may petition the court to release

the funds at any time it can demonstrate that it has a letter of credit, surety bond or assurances in the appropriate amount, or has satisfied the appropriate requirement for the appropriate number of years so that a letter of credit, surety bond or other assurance would not otherwise be required.

The United States, the State, or Reilly may, based on new information, petition the Court once each year between 31 May and 31 July to adjust the amount necessary to cover remaining actions imposed upon Reilly by the RAP as contained in the letter of credit, surety bond or trust fund.

In the event that Reilly enters into default on any of its short-term or other fixed loans, whether challenged by its creditors or not, Reilly shall inform the United States and the State of said event and shall be obligated to respond to requests from the United States or the State for additional explanatory information.

All information submitted by Reilly concerning its financial status for which Reilly claims confidentiality shall be afforded the protection specified in 40 C.F.R. Part 2, subpart B by EPA, and protection of Minn Stat. § 116.075, subd. 2 by the state. Information which is properly determined to be confidential under 40 C.F.R. Part 2, subpart B, by EPA, and under Minn. Stat. § 116.075, subd. 2 by the State, shall only be provided to such employees, agents, and contractors of the United States and the State who would use the information to oversee implementation of this Consent Decree. Each such employee, agent, or contractor shall be provided with a copy of this Part Z and shall sign a statement that he or she shall abide by the confidentiality provisions of this Part Z. Notwithstanding these confidentiality provisions, if the information submitted by Reilly may provide evidence of a violation of federal, state or local law, the United States or the State may provide that information concerning the actual or estimated cost of implementing the RAP will not be claimed confidential by Reilly and may be made public.

Reilly shall provide each year by 31 May to the United States and the State, the information which would be required under 40 C.F.R. §264.143(f)(3). Based on this information, or any other information about Reilly's financial condition which comes to the attention of the United States or the State, the United States or the State may petition the Court for additional financial assurances from Reilly.



### Remedial Action Plan

<u>Page</u>	<u>Section</u>	<u>Errata</u>
iv	Table of Contents 11.4	Delete "Final"
9	2.8., line 5	After "4.3.2." insert "4.5.3.,"
13	4.1.2, line 2	Delete "October 15, 1985" and insert "December 27, 1985". Delete balance of this subsection.
18	4.3.1(c), line 2	Delete "either an" and insert "any"
26	5.3.1., line 2	Delete "the"
26	5.3.1., line 8	Delete the first "the"
37	7.3(A), line 2	Delete "from the Effective Date" and insert "of pumping"
39	7.4.1., line 14	Change "any" to "each"
51	9.3.3.	Change to one paragraph, not two
60	10.1.4., line 4	Insert "the" before "Regional Director" and insert a comma after "Regional Director". Change "and" to "the" and insert after Director "and the Commissioner"
70	11.4.1(A)	[Waiting for property descriptions from St. Louis Park.]
70	11.4.1.(B)3), lines 2 and 3	Change "Hazardous Substances" to lower case letters
71	11.4.1.(B)(4)	Change "Hazardous Substance" to lower case letters
71	11.4.1.(D), line 3	Delete period after G
72	11.4.3.(A)(5), line 9	After "Director" insert a period. Add the following after the period:

Under appropriate circumstances, plans may be submitted to the Regional Administrator and the Director for

replacing small amounts of contaminated soils on the site. Such plans may propose that for minor disturbances of the soil, such as utility line construction, repair or replacement, the material removed be replaced in approximately its original location prior to the disturbance and be covered by clean soil to a depth of at least twelve (12) inches. A refusal by the Regional Administrator or the Director to permit such replacement of contaminated soil shall be subject to review under the Consent Decree.

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|----|---------------------|----------------------------------|
| 74 | 11.4.3.(B)          | Delete period after Part G       |
| 75 | 11.4.4.,<br>line 7  | Delete "s" on "materials"        |
| 75 | 11.4.4.,<br>line 12 | Change "other" to "successor"    |
| 76 | 11.5.2.             | Change to one not two paragraphs |
| 77 | 11.5.3.             | Change to one not two paragraphs |
| 83 | 12.2.4.             | Substitute the following:        |

12.2.4 Hopkins. In the event that the proposed remedial action referenced in Section 12.2.3 relates to an active Hopkins municipal water supply well, Hopkins shall be provided with a copy of the proposed remedial action at the same time as the Regional Administrator, the Director, and the Commissioner and shall have thirty (30) days to submit comments and objections relative to that proposed remedial action, which comments and objections the Regional Administrator, the Director, and the Commissioner shall consider when reviewing and approving the proposed remedial action. In the event the Regional Administrator, the Director, and/or the Commissioner do not adopt the comments or objections made by Hopkins, they shall, prior to approval of the proposed remedial action, set forth in writing to Hopkins the specific basis of the rejection of each comment or objection. Nothing in this Section or Section 12.2.3 shall be construed as a waiver by Hopkins of any right, power, or authority that it might otherwise have.

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|----|-----------------------|----------------------------------|
| 83 | 12.2.4.<br>Monitoring | Change section number to 12.2.5. |
| 84 | 12.2.5.               | Change section number to 12.2.6. |

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10-15-85

For inclusion in Part C of Consent Decree:  
Indemnification Language Included in Purchase Agreements  
by and between the HRA and Minor Parties  
or their Predecessors in Interest.

1. Oak Park Village Associates.

First Addendum to Agreement for Purchase and Sale of Real Estate dated October 6, 1977 by and between St. Louis Park Housing and Redevelopment Authority and Diversified Equities Corporation regarding Lot 1, Block 3, Oak Park Village, Hennepin County, Minnesota:

The parties hereto agree that the following language be added to Paragraph 14 of the Agreement:

"Agency agrees to indemnify and save Redeveloper harmless from and against any and all loss or damage Redeveloper or successors may suffer from damage to improvements constructed on the Property as a result of claims, demands, costs or judgments against and arising out of soil or ground water contamination existing as of the date hereof, or caused by conditions existing as of the date hereof."

2. TCF Service Corporation/Rustic Oaks Condominium, Inc.

Agreement for Purchase and Sale of Real Estate dated August 23, 1978 by and between the Housing and Redevelopment of St. Louis Park and C.M.I. Real Estate & Development, Inc. regarding Lot 1, Block 4, Oak Park Village, Hennepin County, Minnesota:

14. Environmental Matters.

The Agency shall pay the costs of curing soil or ground water pollution caused by the Republic Creosote plant which was formerly on the Property if such cures be mandated by state law and the damage or loss that Redeveloper may suffer to improvements constructed on the Property as a result of curing said soil conditions under said mandate. The Agency shall prepare and shall incur all expenses for any environmental approvals, assessments, environmental impact statements or such other environmental review document or documents deemed necessary or desirable by governmental authority. Agency agrees to indemnify and save Redeveloper harmless from and against any and all loss or damage Redeveloper or successors may suffer from damage to improvements constructed on the Property as a result of claims or demands, costs or judgments against and

arising out of soil or ground water contamination existing as of the date hereof, which indemnification shall not extend to any normal maintenance of improvements necessitated by soil or ground water contamination. Agency further agrees to from time to time at the request of Redeveloper obtain from the Minnesota Pollution Control Agency ("PCA") and furnish to Redeveloper a statement from the PCA indicating the current information of the PCA concerning soil or water conditions in Oak Park Village and the existence of any plans by the PCA to remedy such conditions.

3. Philip's Investment Co.

Agreement for Purchase and Sale of Real Estate dated June 1, 1979 by and between the Housing and Redevelopment Authority of St. Louis Park and Ben Weber and the City of St. Louis Park regarding Lot 1, Block 6, Oak Park Village, Hennepin County, Minnesota:

14. Environmental Matters.

a. Both the City and the Redeveloper agree that the Stipulation between the City and the PCA dated April 19, 1977, is capable of a possible variety of interpretations. As between the Agency, the City and the Redeveloper, as an inducement to the City and Agency to allow the Redeveloper to develop the Property and as security against the Redeveloper, or its assigns or successors in interest, claiming the right to benefit from a broader interpretation of said Stipulation and as an inducement to the Redeveloper to develop the Property and as security against the City or Agency claiming the right to benefit from a narrower interpretation of said Stipulation, the City, Agency and Redeveloper agree that, as between the parties to this Agreement, this paragraph 14 shall constitute the sole remedy available to Redeveloper against the City and Agency for any action or claim against or loss or damage to the Redeveloper which is based on, derived from, or related to the soil or groundwater conditions of the Property, and shall constitute, as between the parties to this agreement, their interpretation of the Stipulation.

b. The City will not require the Redeveloper to excavate soil from the Property in question because of soil or groundwater contamination resulting from the operations of the former Republic Creosote Plant.

c. The City will indemnify the Redeveloper from damage consisting of physical destruction or injury to improvements on the property due solely to soil excavation on the Property required by public agencies. This

indemnification shall not include consequential damage, lost income, lost profit or other forms of indirect loss or damage nor shall it include damage arising from personal injury. Indemnification shall be on a replacement cost less depreciation basis.

d. The indemnification granted by this agreement shall be secondary to any other rights or potential rights which the Redeveloper may have to compensation for any damage or loss whether through eminent domain, grants or otherwise. The Redeveloper shall exercise good faith effort to seek and obtain such compensation before presenting a claim under this indemnification agreement. Any compensation from any other source for damages indemnified herein shall reduce the indemnification liability of the City dollar per dollar.

e. This indemnification and agreement shall not be assignable except to the first mortgagee and shall terminate on January 1, 1985. all claims to indemnification under this agreement must be made in writing and received by the City Clerk of the City prior to January 2, 1985.

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